Do State Reviews of Communications Mergers Serve the Public Interest?

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I. Introduction

This study presents an empirical analysis of the effects of state public utility commission (PUC) oversight of mergers involving communications carriers. The analysis is based on a data set covering major communications sector transactions from January 1, 2010 through June 30, 2017. Specifically, we gathered and analyzed data on all 40 major transactions approved by the Federal Communications Commission (FCC) during this period to: (a) determine the extent of PUC involvement in these transactions; and, (b) for the transactions in which PUCs were actively engaged, to assess both the procedural and substantive effects of their interventions.\(^1\)

The appropriate role of state governments in the merger review process has been the subject of vigorous debate among academics and policymakers. Supporters of state involvement argue that states may have unique local knowledge of competitive conditions or other comparative advantages which allow them to add value to the enforcement efforts of federal antitrust watchdogs at the Department of Justice (DOJ) and the Federal Trade Commission (FTC).\(^2\) Critics question the benefits of state intervention, and also point to the costs, arguing that state reviews are duplicative, costly and involve unnecessary delays.\(^3\) Critics also note that state enforcers face incentives to place parochial political interests ahead of overall consumer welfare or the broader public interest, and thus to impose merger conditions that benefit narrower constituencies to the detriment of the public at large.\(^4\) As we explain below, our data suggest that these concerns are especially apposite to PUC reviews of communications mergers.

In particular, we explain that PUCs typically operate – like the FCC – under a broad and nebulous “public interest” standard, where the burden of proof is with the merging parties, unlike in antitrust review, where the burden is on the government. Also like the FCC, PUCs’ decisions not to approve mergers are, for procedural reasons, almost impossible to challenge in court. Thus, PUCs have a high degree of “hold-up” power over transactions, which allows them to extract “voluntary” concessions with little oversight. Further, unlike the FCC – which assesses the public interest from a national perspective – PUC interventions under the public interest mantle are often motivated by parochial concerns and local political interests. Thus, perversely, the merger conditions imposed by PUCs frequently come at the direct expense of other states and undermine the achievement of national merger efficiencies.

Our analysis of the frequency and characteristics of PUC interventions in communications mergers provides new evidence that states impose significant and unnecessary costs in the form

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\(^1\) FCC approved transactions involving only assets located in U.S. territories are excluded from the universe of data.


of procedural burdens and delays, and that the concessions they extract tend to serve narrow interests rather than the overall public interest. Specifically:

- One or more PUCs actively intervened in 19 of the 40 mergers approved by the FCC during this period. In nearly all cases, multiple PUCs reviewed each transaction. For example, 22 PUCs engaged in active reviews of the 2011 transaction between Qwest and CenturyLink; 17 reviewed Verizon’s 2016 acquisition of XO Communications.

- PUCs reviews can impose significant delays on mergers, thereby postponing the realization of merger efficiencies. In 10 of the 19 mergers reviewed by PUCs, the PUCs’ reviews extended past the date of FCC approval; in six of those transactions, PUCs delayed closure of the transaction by more than a month.

- PUC merger reviews typically are carried out through administrative proceedings, which often involve extensive filings and testimony, dueling expert witnesses, and even full-fledged evidentiary hearings. For instance, the 2010 transaction between Frontier and Verizon involved over 1,500 filings spread out across nine PUCs.

- Of the 19 transactions reviewed and approved by PUCs, 10 were approved subject to conditions. In six of these 10 cases, PUCs mandated conditions even though the FCC found the transaction to be in the public interest without the imposition of conditions.

- The conditions imposed by PUCs are often unrelated to or adverse to the consumer welfare goals of the DOJ/FTC and the national public interest goals of the FCC. In particular, mandates that require the merging firms to maintain or increase in-state employment, or to undertake investments, constitute “beggar-thy-neighbor” conditions which deprive neighboring states of jobs and investment while undermining the realization of merger-specific efficiencies that benefit consumers and the economy overall. Of the 19 mergers reviewed by PUCs, six were approved subject to employment mandates and seven were approved subject to investment conditions.

- States often force merging firms to make explicit financial commitments in return for merger approvals. For instance, the 22 PUCs which reviewed the 2011 merger between Qwest and CenturyLink collectively required at least $330 million in mandated expenditures in return for approval. In total, the explicitly monetary commitments imposed by PUCs on merging communications companies between 2010 and 2017 exceeded $1.03 billion.

- In some cases, the conditions imposed on merging parties were overtly political in nature or clearly aimed at narrow interests. Firms seeking PUC approval have been forced to fund an athletic event sponsored by another (for-profit) company, participate in a state political initiative, fund public and government access channels, and grant employment concessions to specific subsets of employees.

- States often use merger reviews to impose conditions directly relating to Internet Protocol-based services (i.e., broadband), effectively circumventing the explicit intent of federal policy that such services are interstate in nature and thus exempt from state regulation.
The use of “most-favored-state” ("MFS") provisions – under which PUCs condition merger approvals on the agreement of the parties to abide by merger conditions imposed by PUCs in other states – threatens to dramatically increase the costs and risks associated with merger transactions. We identify six transactions in which PUCs imposed MFS provisions, four of which involved the New York State Public Service Commission.

These findings suggest that PUC interventions in communications mergers impose significant direct and indirect costs on the merging parties. Because mergers are a key mechanism for reallocating resources to their highest valued economic uses, the costs and delays imposed by PUCs ultimately harm overall consumer welfare and economic performance. Accordingly, policymakers at both the federal and state level should consider reforms that would significantly constrain the ability of PUCs to intervene in communications mergers.

The remainder of this report is organized as follows. Section II discusses the law and economics of merger enforcement, focusing on both the substantive and procedural factors that bear on the appropriate role of state regulatory bodies in the review process. Section III presents our empirical findings regarding the extent and nature of PUC interventions in communications mergers. Section IV presents a brief summary of our findings.

II. The Law and Economics of State Merger Enforcement

This section discusses the analytical framework which motivates our empirical analysis. It begins with a discussion of the goals of merger enforcement policy – in broad terms, to maximize the net benefits of mergers by prohibiting transactions that are harmful to competition and consumer welfare without deterring those that are beneficial. Next we provide a brief overview of the merger review process at the federal level, including the roles of the economy-wide enforcement agencies, the DOJ and FTC and, with respect to communications mergers, the FCC. Finally, we turn to role of state merger enforcement and provide a law-and-economics-based framework for evaluating the benefits and costs of state merger enforcement.

Our discussion focuses on two sets of incentive issues which are present in merger enforcement, and which we refer to as (a) **hold-up power** and (b) the **externality problem**. Hold-up power refers to the ability of merger enforcers to use the threat of blocking a transaction to extract conditions from the merging parties which they could not lawfully impose absent the transaction. While all merger enforcers have some degree of hold-up power, we argue that the broad authority and practical impunity from appeal enjoyed by the FCC and PUCs enhances their hold-up power relative to antitrust enforcers. The externality problem refers to the fact that state enforcers are likely influenced by the ability to impose conditions whose benefits are concentrated in their home states while the costs are borne more widely.

A. Merger Enforcement, Consumer Welfare and the Public Interest

All U.S. mergers that involve a substantial volume of interstate commerce are subject to federal review under the Clayton Act. Mergers are reviewed by either the DOJ or the FTC, with the assignment of responsibility typically going to the agency with the most prior experience in the industry involved; mergers involving communications providers typically fall under the purview of the DOJ. For industries subject to sector-specific regulation, transactions are also reviewed by
the relevant sector-specific regulator, such as the FCC for communications mergers or the Federal Energy Regulatory Commission for oil and gas pipelines.

The process for review by the antitrust agencies is governed by the Hart-Scott-Rodino (“HSR”) Act, which requires parties engaging in transactions above an annually-adjusted monetary threshold to notify the government at least 30 days prior to consummating the transaction (15 days in the case of a cash tender offer or a bankruptcy). If the agency reviewing the merger grants an early termination of the waiting period or allows the initial waiting period to expire, the parties are free to proceed. Alternatively, the reviewing agency may issue a Request for Additional Information (a “Second Request”), which extends the waiting period until the parties attest they have “substantially complied” with the Second Request. At that point, the reviewing agency has 30 days (10 days in the case of a cash tender offer or bankruptcy) to decide whether it will (1) allow the transaction to proceed, (2) enter into a consent agreement that seeks to remedy potential competitive harms through the imposition of conditions, or (3) file for an injunction to block the merger.

The substantive standard for merger review by the antitrust agencies is embodied in Section 7 of the Clayton Act, which prohibits mergers for which the effect “may be substantially to lessen competition, or to tend to create a monopoly.” To successfully block a merger in court, the government must demonstrate by a preponderance of the evidence that it would be likely to result in “a substantial lessening of competition.” There is broad agreement among policy makers and scholars that merger enforcement should be based exclusively on competition concerns. As the U.S. explained in a recent submission to an Organization for Economic Co-operation and Development working party, “U.S. antitrust law and policy, including merger review, are implemented based on the belief, borne out by our economic history, that the public interest is best served by focusing exclusively on competition considerations.” Or, as former FTC Chairwoman Edith Ramirez recently commented, a “core feature that we [the FTC] have learned leads to sound competition enforcement is a focus on competition factors alone, rather than on consideration of other economic and social policies.”

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6 At this stage, the parties (the agency and the merging firms) have the option to extend the review in order to avoid litigation and attempt to come to a settlement.
7 15 USC §18 (1).
10 Edith Ramirez, Core Competition Agency Principles: Lessons Learned at the FTC, Antitrust in Asia Conference: ABA Section of Antitrust Law and Expert Advisory Committee of the Anti-Monopoly Commission of
In this context, both the antitrust agencies and the reviewing courts are heavily influenced by economic analysis, as codified in the DOJ/FTC *Horizontal Merger Guidelines* (Guidelines) and embodied in decades of antitrust jurisprudence.\(^{11}\) The Guidelines provide that “mergers should not be permitted to create, enhance, or entrench market power or to facilitate its exercise,” meaning that mergers will be challenged if they are “likely to encourage one or more firms to raise price, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.”\(^{12}\) The Guidelines also recognize that mergers create substantial benefits by reallocating scarce resources to higher valued uses, thereby enhancing consumer welfare and promoting economic growth.\(^{13}\)

Thus, antitrust policy seeks to strike a balance, permitting mergers that enhance consumer welfare while prohibiting those that reduce it.\(^{14}\) The agencies often seek to achieve this balance by imposing remedies that aim to eliminate or ameliorate potential anticompetitive effects, such as requirements to divest assets or refrain from specific business practices.\(^{15}\) When such conditions are imposed by the DOJ or the FTC, they are embodied in consent decrees entered into by the parties, which are subject to automatic court review under the Tunney Act.\(^{16}\)

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11 U.S. Department of Justice and U.S. Federal Trade Commission, *Horizontal Merger Guidelines* (2010) (hereafter *Horizontal Merger Guidelines* or *Guidelines*) (available at https://www.justice.gov/atr/horizontal-merger-guidelines-08192010); see also Richard Posner, *Antitrust Law*, 2d. ed. (University of Chicago Press, 2001) at viii-ix. (“Antitrust has to a great extent been normalized…Its political, its ideological character has receded in tandem with growing agreement on its premises…Almost everyone professionally involved in antitrust today…not only agrees that the only goal of the antitrust laws should be to promote economic welfare, but also agrees on the essential tenets of economic theory that should be used to determine the consistency of specific business practices with that goal.”).

12 *Guidelines* at 2. See also Jeffrey A. Eisenach, “US Merger Enforcement in the Information Technology Sector,” Roger Blair and Daniel Sokol, eds., *Handbook of Antitrust, Intellectual Property, and High Tech*, (Cambridge University Press, 2017) 445-466 at 445 (hereafter Eisenach 2017) (“Competition is harmed when a transaction results in a significant increase in market power, defined as the ability of a firm, or group of firms, to set and maintain prices above (or reduce quality below) the competitive level, thereby harming consumer welfare; or, in an increase in the incentive and ability of a dominant firm to engage in anticompetitive activities, such as raising rivals’ costs.”).

13 See *Guidelines* at 29 (“[A] primary benefit of mergers to the economy is their potential to generate significant efficiencies and thus enhance the merged firm’s ability and incentive to compete, which may result in lower prices, improved quality, enhanced service, or new products. For example, merger-generated efficiencies may enhance competition by permitting two ineffective competitors to form a more effective competitor, e.g., by combining complementary assets.”).

14 One way of thinking about this objective is in terms of Type I and Type II errors: that is, antitrust policy should aim to minimize the combined costs of erroneously permitting harmful mergers (Type I error), on the one hand, and of erroneously prohibiting beneficial ones (Type II error), on the other hand. See Frank Easterbrook, “Limits of Antitrust,” *Texas Law Review* 63:1 (1984) 1-40; see also Geoffrey A. Manne and Joshua D. Wright, “Innovation and the Limits of Antitrust,” *Journal of Competition Law & Economics* 6:1 (2010) 153–202.


In the context of this study, it is worth noting that the antitrust agencies have historically taken an active role in reviewing communications sector mergers. For example, between 2010 and 2014, nine percent (13 out of 138) telecommunications mergers for which HSR notifications were filed received a Second Request, compared to just three percent of mergers among firms in other information technology sectors.\(^{17}\)

While the Clayton Act gives the FCC authority to review mergers under the same Section 7 standard used by the antitrust agencies, the FCC chooses instead to rely on Sections 214(a) and 310(d) of the Communications Act, which require it to determine whether the transfers of licenses and authorizations are in the “public interest.” In doing so, it employs “a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.”\(^{18}\) As the FCC explained in its 2016 Order approving the Charter-Time Warner merger, its competitive analysis “is informed by, but not limited to, traditional antitrust principles.”\(^{19}\) Specifically:

The DOJ...reviews telecommunications mergers pursuant to Section 7 of the Clayton Act, and if it sues to enjoin a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly. The DOJ review is consequently limited solely to an examination of the competitive effects of the acquisition, without reference to diversity, localism, or other public interest considerations. Moreover, the Commission’s competitive analysis under the public interest standard is broader. For example, the Commission considers whether a transaction would enhance, rather than merely preserve, existing competition, and often takes a more expansive view of potential and future competition in analyzing that issue.\(^{20}\)

Furthermore, whereas the Clayton Act requires the antitrust agencies to demonstrate to a court that a merger would harm competition, the FCC can effectively block a merger simply by failing to find that it is in the public interest, in which case it must designate the issue for an administrative hearing. Only after such a hearing is complete do the merging parties have access to judicial review.\(^{21}\)

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\(^{17}\) Eisenach 2017 at 452.


\(^{19}\) Ibid. at ¶ 28.

\(^{20}\) Ibid. at ¶ 29.

\(^{21}\) Moreover, there is no time limit on FCC reviews, just a voluntary (and frequently “tolled”) 180-day shot clock. See American Bar Association Section of Antitrust Law, Telecom Antitrust Handbook, 2d. ed. (2013) at 92-99 (hereafter Telecom Antitrust Handbook).
As a result of these differences, FCC reviews sometimes take longer and often require more concessions from the merging parties than the DOJ’s reviews of the same transactions, and the FCC has been criticized for using the resulting hold-up power to impose conditions that bear little or no relation to the effects (competitive or otherwise) of the transaction under review, and which it could not achieve (or successfully defend in court) through formal rulemaking. As former FCC chief economist Howard Shelanski has written, the FCC has “extracted conditions from the merging parties that the agency never could have obtained under the antitrust laws, that were beyond the FCC’s regulatory power to mandate (hence the conditions had to be voluntarily binding, for the carriers), and that were not reviewable by a court of law.”

The opaque nature of the FCC process has also raised concerns. For example, in his dissent to the FCC’s Order approving Charter-Time Warner Cable merger, then FCC Commissioner (now Chairman) Ajit Pai bemoaned the lack of transparency into negotiations over merger conditions (even among commissioners): “[T]he parties are required to negotiate behind closed doors with the Chairman’s Office or Office of General Counsel… on conditions to be attached to the deal. Months can go by without any transparency, internal or external, regarding the ornaments that the Chairman’s Office is seeking to place on the Christmas tree.”

B. State Interventions in Merger Enforcement

State attorneys general (AGs) have authority under Section 16 of the Clayton Act to seek injunctive relief or merger conditions under the federal antitrust laws on behalf of the consumers in their states, acting as parens patriae. In addition, a few states have adopted state-level antitrust statutes, and state AGs also sometimes represent state governments as complainants in their proprietary capacities as customers of the merging parties. In federal litigation, state AGs operate under the procedural and substantive provisions of the Clayton Act.

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24 Charter-Time Warner Order at 343. Commissioner Pai was also highly critical of the substance of the conditions imposed on the transaction, arguing in his dissent that the majority had “turned the transaction into a vehicle for advancing its ambitious agenda to micromanage the Internet economy.” See Charter-Time Warner Order at 340. In April 2017, the FCC issued an Order on Reconsideration eliminating requirements that Charter deploy new broadband infrastructure in areas already served by competing broadband providers. See Federal Communications Commission, In the Matter of Applications Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations, Order on Reconsideration, MB Docket No. 15-149 (April 3, 2017).

PUC reviews of communications mergers are authorized under state laws, which differ from state to state. In general, however, PUC authority to review transactions is tied to the transfers of operating certificates and tariffs required for the provision of regulated intrastate services, such as local exchange and intrastate toll wireline telephone service, or other services directly regulated by the PUC; like the FCC, the burden of proof falls on the merging parties to demonstrate the transaction is in the public interest.

While broadband and Internet Protocol-based services, and most aspects of wireless services (rate and entry regulation), are exempt from PUC jurisdiction under federal law, most communications providers offer some type of intrastate service. Moreover, PUCs often interpret their jurisdiction broadly, and our data shows they review nearly all major wireline and cable mergers, and even assert jurisdiction in some primarily wireless transactions. As more and more services become IP-based, the use of merger reviews by PUCs to impose conditions on firms offering such services – including, as our data demonstrates, conditions specifically relating to broadband – is increasingly at odds with the intent of federal policy, which is that IP-services be regulated (if at all) on a national basis.

The role of states in merger reviews has long been a source of controversy. On the one hand, the benefits of state review depend on the assumption that states have some form of comparative advantage either in assessing the benefits and costs of mergers or in identifying remedies that allow mergers to proceed while ameliorating competitive harms. Defenders of state intervention often argue that state regulators have more complete knowledge about local markets and therefore are better able detect harmful mergers. While this argument may once have had merit, it seems less compelling in the era of big data, and in view of the sophisticated, market-by-market analyses conducted by the federal antitrust regulators. Indeed, the settlement conditions imposed by the federal agencies on merging parties often involve geographically-specific divestitures. Critics of state review thus conclude that the incremental benefits of state merger review are likely small or non-existent.

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26 See e.g., U.S. General Accounting Office, Process by Which Mergers of Local Telephone Companies are Reviewed (August 1999) at 10 (“State statutes that provide the authority to public utility commissions (sometimes called public service or commerce commissions) vary a great deal with regard to their merger review authority.”).

27 See Telecom Antitrust Handbook at 98 (“Many of the state statutes providing for review of proposed telecommunications and cable industry mergers apply a public interest standard similar to that used by the FCC.”).


29 For example, in its order approving the merger of Verizon and Alltel, the FCC required divestiture in five local markets – Muskegon, Michigan, Lyon, Iowa, Manistee, Michigan, Newaygo, Michigan, and Johnson, Tennessee. See Federal Communications Commission, In the Matter of Applications of Cellicco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manger and De Factor Transfer Leasing Arrangements, Memorandum Opinion and Order and Declaratory Ruling, WT Docket No. 08-95, (November 4, 2008) at ¶159. Similarly, the DOJ approved the merger of AMC and Starplex Cinemas in 2015 conditional on the divestiture of a single movie theater in Berlin, Connecticut and a single movie theater in East Windsor, New Jersey. See U.S. and State of Connecticut v. AMC Entertainment Holdings, Inc.
On the other hand, critics argue, the costs of state intervention – both direct and indirect – are significant. The direct costs arise from procedural burdens associated with complying with multiple, duplicative regulatory proceedings involving at least one federal agency and several, even dozens, of state regulatory proceedings. As detailed below, the direct costs can be particularly large in the case of communications mergers that are reviewed by PUCs. The most active PUCs (e.g., those in California, New York, and West Virginia) often review mergers by means of administrative proceedings, which include substantial information and document demands, direct and rebuttal submissions (and often expert reports) by the merging parties and intervenors (including publicly funded “public interest” groups), and sometimes full-fledged evidentiary hearings presided over by administrative law judges (“ALJs”) who issue recommended decisions that PUC commissioners then consider. The direct cost to the merging parties of participating in these procedures likely runs into the tens of millions of dollars per transaction.

While the direct costs of complying with state procedural demands are substantial, the indirect costs – i.e., the costs of increased risk and delay, and the uneconomic conditions extracted by

See e.g., DeBow Testimony (“[T]he states’ involvement in antitrust to date has not been particularly significant in overall terms…this suggests fairly strongly that the benefit from sparing the states from federal preemption is small.”). Critics also note that state antitrust enforcers lack the resources and expertise to contribute significantly to merger enforcement and thus end up “free-riding” off of the efforts of Federal enforcers. See e.g., Robert W. Hahn and Anne Layne-Farrar, “Federalism in Antitrust,” Harvard Journal of Law and Public Policy 26 (2003) 877-921 at 887; and, American Bar Association, Comments of the Section of Antitrust Law of the American Bar Association in Response to the Antitrust Modernization Commission’s Request for Public Comment Regarding Government Enforcement Institutions: The Enforcement Role of the States With Respect to Federal Antitrust Laws in Merger Cases (2005) 1-13 at 7 (“With respect to delays and expenses associated with dual review, while it is not uncommon for state attorneys general to participate in such review by requesting and obtaining documents and information, in the view of party counsel, there are instances where a state attorney general contributed few resources, provided little expertise, and conducted little or no document review. In these instances, dual review appeared to add costs with little corresponding benefit.”) (available at https://www.americanbar.org/content/dam/aba/administrative/antitrust_law/comments_gov-enforc-comm.authcheckdam.pdf).

See e.g., Bill Peacock, Mario Loyola, and Josiah Neely, Protecting Innovation: The Role of State Attorneys General in Antitrust Enforcement, Texas Public Policy Foundation (January 2013) 3-24 at 3.

See e.g., Antitrust Modernization Commission, Report and Recommendations (April 2007) at 127 (“Multiple enforcers may investigate the same conduct or transaction, increasing the burdens on companies, and ultimately, costs to consumers.”).

In 2003, the average cost of complying with a Second Request alone was estimated at $2.5 million in legal and consulting fees. See Jonathan B. Baker, “The Case for Antitrust Enforcement,” Journal of Economic Perspectives 17:4 (2003) 27-46 at 42. As detailed below, the obligations associated with complying with state level reviews are substantial.

Recent economic literature has emphasized uncertainty in the closing process as a major factor deterring merger activity. See Vineet Bhagwat, Robert Dam, and Jarrad Harford, “The Real Effects of Uncertainty on Merger Activity,” Working Paper (February 2016) 1-67 at 1 (“Deals for public targets take significant time to complete. During the interim, firm values can change substantially, inducing the parties to prefer deal renegotiation or
state AGs and PUCs in return for allowing mergers to proceed – are likely of greater economic consequence.  

To begin, state antitrust enforcers, like those at the federal level, possess hold-up power in proportion to the breadth of their statutory mandates and their ability to impose conditions without having to engage in litigation. Like the federal antitrust agencies, AGs operate primarily under a relatively well-defined “harm to competition” standard, and must go to court in order to block a transaction. Like the FCC, PUCs operate under the relatively ambiguous public interest standard, and must affirmatively approve a transaction in order for it to proceed. Further, because communications networks are not easily divided along state lines, disapproval by any PUC with jurisdiction is likely sufficient to prevent a transaction from going forward.  

In addition to the hold-up problem, state enforcers are subject to what economists refer to as an externality problem: The benefits of any favors extracted by state antitrust reviewers accrue entirely or primarily to their states, while the costs (both direct and indirect) are shared across consumers in all states (as well as the firms’ shareholders). In the case of state AGs, empirical research has shown not only that they are subject to such incentive problems, but also – perhaps not surprisingly – that they become more prone to such conduct during election years. Thus,

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35 On the social costs of delaying transactions in the communications sector, see Eisenach and Singer 2013 at 291 (“Thus, the lost consumer surplus from delays is substantially greater than the private costs with the annual loss of consumer surplus equal to roughly the transaction’s price.”); see also Evan Kwerel and Alex D. Felker, “Using Auctions to Select FCC Licensees,” FCC OPP Working Paper No. 16 (1985) 1-31 at 11-12 (finding that each year of delay in approving license transfers raises the cost to the merging parties by nine percent). See Antitrust Modernization Commission, Report and Recommendations (April 2007) at 130 (“These delays impose significant burdens on companies with time-sensitive transactions that potentially provide great value to consumers and shareholders alike.”).

36 For example, the process in California parallels that at the federal level: If the California PUC withholds approval the merger can be referred to an administrative hearing; only after the hearing is complete would the parties have access to appeal state court. See Cal. Pub. Utils. Code § 1756.

37 See e.g. Posner 2004 at 7 (“States also have opportunities to export costs in much the same way that a polluting firm can export costs in the absence of legal liability…. For example, a rule that exempted negligent in-state manufacturers from liability to nonresidents injured by their negligence, or that imposed strict liability on nonresidents who injured state residents however careless the residents were, can operate to export costs. State antitrust suits, which are a form of tort suits, can have the same result.”). See also Seth L. Cooper, “Multiple Government Regulatory Reviews Burden Telecom Mergers with Too Many Conditions,” Free State Foundation Perspectives 5;31 (2010) 1-8 at 7 (hereafter Cooper 2010) (“But whenever state regulators withhold approval, they effectively preclude completion of mergers involving interstate telecom providers. So long as even one state PUC drags out its merger review process, consumers in other states who would otherwise stand to experience long-term benefits from service offerings provided by a merged entity are denied those benefits. This essentially makes one state PUC’s delays in approving a merger an externality imposed on out-of-state consumers in the form of lost opportunity costs.”).

the externality problem makes state enforcers prone to imposing conditions which, even if beneficial to their own citizens, harm consumer welfare overall.

Figure 1 illustrates how the hold-up and externality problems affect federal and state enforcement agencies. As the figure shows, both federal and state enforcers possess hold-up power, but the antitrust agencies’ hold-up power is attenuated by their narrower authority and the need for court review. At the state level, both AGs and PUCs have the ability to extract conditions which benefit their constituents while externalizing costs, but PUCs are unique in having both strong hold-up power and the ability to internalize the benefits and externalize the costs of the conditions they extract.

**Figure 1:**
**HOLD-UP POWER AND EXTERNALITIES IN STATE AND FEDERAL MERGER ENFORCEMENT**

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<th>Federal</th>
<th>State</th>
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<tr>
<td><strong>Clayton Act/ Antitrust</strong></td>
<td>Hold-Up Power: Moderate</td>
<td>Hold-Up Power: Moderate</td>
</tr>
<tr>
<td></td>
<td>Externality Problem: None</td>
<td>Externality Problem: High</td>
</tr>
<tr>
<td><strong>Communications Act/Public Interest</strong></td>
<td>Hold-Up Power: High</td>
<td>Hold-Up Power: High</td>
</tr>
<tr>
<td></td>
<td>Externality Problem: None</td>
<td>Externality Problem: High</td>
</tr>
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To be clear, it is not our contention that *all* merger conditions imposed by PUCs (or AGs) are *prima facie* harmful. Rather, our point is that the incentive structures within which state enforcers operate are favorable to the imposition of conditions that benefit narrow constituencies over the larger, national public interest. For example, the efficiency benefits of a merger will typically be national or span a number of states, while the incentives of the state agencies is to pursue conditions that benefit mainly local constituencies. In the extreme, the threat of delays and expensive conditions may cause welfare-enhancing mergers to not be undertaken at all. For mergers that are nevertheless consummated, the conditions sought by state regulatory authorities
in some states may undermine the realization of the efficiencies that antitrust policy is meant to promote in other states.\textsuperscript{39}

Further, it is significant that state intervention can only affect the outcome of mergers which win the approval of federal antitrust authorities and (for communications mergers) the FCC – which is to say, mergers which have been found by the federal agencies, to (a) not harm competition and (b) be in the public interest. Thus, states that extract parochial conditions that reduce or eliminate a transaction’s benefits are actually harming states that forego the opportunity to engage in such beggar-thy-neighbor conduct.\textsuperscript{40}

Concerns about these and related issues have led numerous scholars to call for limits on state intervention in mergers. For example, in testimony before the Antitrust Modernization Commission, Professor Michael DeBow argued for legislation that would explicitly allow federal preemption of state antitrust laws and reduce the power of states to bring federal antitrust cases.\textsuperscript{41} Other scholars have advocated limiting the scope or duration of state reviews, including limiting PUC reviews of communications transactions.\textsuperscript{42} The data presented in the following section generally supports the case for reform.

\section*{III. PUC Interventions in Communications Mergers}

This section presents an empirical analysis of PUC involvement in recent communications mergers. The evidence demonstrates that PUCs frequently intervene in major communications mergers, often impose significant costs and delays through lengthy proceedings, extract substantial concessions even for transactions that pose no threat to competition, impose settlement terms that come at the direct expense of other states, and impose conditions unrelated to or at odds with the goals of antitrust policy. The first section below presents data on the frequency and extent of PUC intervention. The second section details the nature of that intervention and explains why we conclude it often fails to serve the public interest.

\subsection*{A. Extent of State Intervention in Communications Mergers}

This section presents our analysis of PUC reviews of communications mergers since January 1, 2010. Specifically, we gathered and analyzed data on PUC reviews of the 40 mergers approved by the FCC under Sections 214(a) and 310(d) of the Communications Act of 1934.\textsuperscript{43} For each of

\textsuperscript{39} Because communications mergers often involve demand- and supply-side economies of scale, excessive state level interventions by PUCs pose particular strong threats to the realization of efficiencies. See \textcite{Eisenach 2017} at 445.

\textsuperscript{40} FCC Orders approving mergers routinely contain a lengthy discussion assessing the net public interest effects of a merger at the national level; only mergers which the FCC finds to have net benefits are approved.\textsuperscript{41} \textcite{DeBow Testimony} at 1-2.

\textsuperscript{41} See e.g., \textcite{Cooper 2010, Lande 1990} at 1047-1094.

\textsuperscript{42} We do not include data on transactions, such as AT&T-T-Mobile and Comcast-Time Warner Cable, which were blocked by federal enforcers because in these cases the PUC review process was truncated and terminated without conclusion as a result of the federal challenge. We exclude mergers involving only assets in U.S. territories (Guam and the U.S. Virgin Islands) from the sample due to the unique issues raised in these cases.
the 40 transactions, Table 1 indicates the merging parties, the year in which the merger gained FCC approval, whether the merger involved the exchange of wireless or cable assets, whether the merger was reviewed and approved by a least one PUC, and the PUCs involved. Overall, our inquiry indicates that 19 of these 40 mergers were reviewed and approved by at least one PUC, and that West Virginia (9), California (8), New York (6) and Virginia (6) were the most active PUCs in terms of the number of transactions reviewed.
### Table 1: FCC Approved Mergers, 2010-2017

<table>
<thead>
<tr>
<th>Merging Parties</th>
<th>Year</th>
<th>PUC Approved</th>
<th>PUCs</th>
<th>Wireline/ Cable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bresnan Communications/Cablevision Systems Corporation</td>
<td>2010</td>
<td>Yes</td>
<td>2 (CO, UT)</td>
<td>Yes</td>
</tr>
<tr>
<td>Celico Partnership d/b/a Verizon Wireless/Atlantic Tele-Network</td>
<td>2010</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Frontier Communications Corporation/Verizon Communications</td>
<td>2010</td>
<td>Yes</td>
<td>9 (AZ, CA, IL, NV, OH, OR, SC, WA, WV)</td>
<td>Yes</td>
</tr>
<tr>
<td>Hawaiian Telecom/Hawaiian Telecom Services Company</td>
<td>2010</td>
<td>Yes</td>
<td>1 (HI)</td>
<td>Yes</td>
</tr>
<tr>
<td>Q-Comm Corporation/Stream Corporation</td>
<td>2010</td>
<td>Yes</td>
<td>7 (MD, MN, MS, NY, TN, VA, WV)</td>
<td>Yes</td>
</tr>
<tr>
<td>SkyTerra Communications/Harbinger Capital Partners Funds</td>
<td>2011</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Comcast Corporation/Generic Electric Company/NBC Universal</td>
<td>2011</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Cumulus Media/Citadel Broadcasting Corporation</td>
<td>2011</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>EchoStar Corporation/Hughes Network Systems/BRH Holdings GP</td>
<td>2011</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Global Crossing Limited/Level 3 Communications</td>
<td>2011</td>
<td>Yes</td>
<td>2 (MN, TX)</td>
<td>Yes</td>
</tr>
<tr>
<td>Qualcomm Incorporated/AT&amp;T</td>
<td>2011</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Comcast Corporation/Telecom Corporation</td>
<td>2011</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>EchoStar Corporation/Hughes Network Systems/BRH Holdings GP</td>
<td>2011</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>GCI Communications Corp./Unicom/The Alaska Wireless Network</td>
<td>2011</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>New Young Broadcasting Holding Co./Media</td>
<td>2011</td>
<td>Yes</td>
<td>6 (CA, DC, MS, NY, UT, WV)</td>
<td>Yes</td>
</tr>
<tr>
<td>General Communications</td>
<td>2012</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Sprint Communications Company/SoftBank Corp./Starburst II</td>
<td>2012</td>
<td>Yes</td>
<td>6 (CA, DC, MS, NY, UT, WV)</td>
<td>Yes</td>
</tr>
<tr>
<td>Tribune Broadcasting Company II/LocalTV Holdings</td>
<td>2012</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>AT&amp;T/Atlantic Tele-Network</td>
<td>2012</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Belo Corp./Gannett Co.</td>
<td>2013</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Cablevision Systems Corporation/Charter Communications</td>
<td>2013</td>
<td>Yes</td>
<td>1 (UT)</td>
<td>Yes</td>
</tr>
<tr>
<td>Deutsche Telekom AG/T-Mobile USA/MetroPCS Communications</td>
<td>2013</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>GCI Communications Corp./Unicom/The Alaska Wireless Network</td>
<td>2013</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>New Young Broadcasting Holding Co./Media</td>
<td>2013</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Level 3 Communications/tw telecom</td>
<td>2014</td>
<td>Yes</td>
<td>8 (CO, DC, HI, MS, NJ, UT, VA, WV)</td>
<td>Yes</td>
</tr>
<tr>
<td>LIN Media/Post-Merger Media General</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Sinclair Television Group/Allbritton Communications</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>AT&amp;T/DIRECTV</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Frontier Communications Corporation/AT&amp;T/Southern</td>
<td>2014</td>
<td>Yes</td>
<td>1 (CT)</td>
<td>Yes</td>
</tr>
<tr>
<td>New England Telephone Company</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Level 3 Communications/tw telecom</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>LIN Media/Post-Merger Media General</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Sinclair Television Group/Allbritton Communications</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>AT&amp;T/DIRECTV</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Frontier Communications Corporation/Verizon Communications</td>
<td>2014</td>
<td>Yes</td>
<td>2 (CA, TX)</td>
<td>Yes</td>
</tr>
<tr>
<td>Altice N.V./Cablevision Systems Corporation</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>AT&amp;T Mobility Spectrum/Tampnet/Broadpoint License Co.</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Celico Partnership d/b/a Verizon Wireless/Nextlink Wireless</td>
<td>2014</td>
<td>No</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Charter Communications/Time Warner</td>
<td>2014</td>
<td>Yes</td>
<td>5 (CA, HI, NJ, NY, WV)</td>
<td>Yes</td>
</tr>
<tr>
<td>Cable/Advance/Newhouse Partnership</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>SprintCom/Shanandoah Telecommunications</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Company/nTELOS Holding Group</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Suddenlink Communications/Altice N.V./Cequel Corporation</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Unite Private Networks/Cox Communications</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Verizon Communications/XO Holdings</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Consolidated Communications Holdings/FairPoint Communications</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
<tr>
<td>Nexstar Media Group/Media General</td>
<td>2014</td>
<td>Yes</td>
<td>None</td>
<td>No</td>
</tr>
</tbody>
</table>

**Notes:** The year assigned to each merger is based on the date of FCC approval.
We classified a merger as having been reviewed and approved by a PUC if we were able to identify at least one decision, order, press release, or other public document evidencing formal PUC approval. Because PUCs do not always issue formal decisions or orders, it is possible (even likely) that we have not fully identified the universe of mergers reviewed and approved by PUCs or the universe of PUCs involved in each transaction. Thus, our results may underestimate the extent of PUC intervention (and, accordingly, the costs and delays involved). Nevertheless, our findings are consistent with the overall scope of PUC authority. For instance, PUCs typically are limited to jurisdiction over transactions involving the transfer of intrastrate wireline assets and, in some cases, cable assets, while review of wireless mergers is typically limited to those involving incidental transfers of state-regulated facilities. Our data shows that all 17 of the FCC-approved transactions involving wireline or cable assets were reviewed and approved by at least one PUC, as compared with only two of the 23 transactions involving wireless providers or media companies.44

For the 19 PUC-reviewed transactions we identified, Table 2 indicates whether the merger was subject to conditions mandated by the federal authorities (FCC or DOJ) or by at least one PUC.

44 The Sprint-Shentel and AT&T-Leap transactions are the only two transactions involving the transfer of wireless assets that we identified as being subject to review and approval by PUCs.
TABLE 2:
MERGER CONDITIONS FOR MERGERS REVIEWED AND APPROVED BY PUCs

<table>
<thead>
<tr>
<th>PUC Approved Mergers</th>
<th>FCC Conditions</th>
<th>DOJ Conditions</th>
<th>PUC Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bresnan/Cablevision (2010)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Frontier/Verizon (2010)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Hawaiian Telcom/Hawaiian Services (2010)</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Q-Comm/Windstream (2010)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Global Crossing/Level 3 (2011)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Qwest/CenturyLink (2011)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Cablevision/Charter (2013)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Sprint/SoftBank/Starburst (2013)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>AT&amp;T/Cricket/Leap (2014)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Frontier/AT&amp;T (2014)</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Level 3/tw telecom (2014)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Frontier/Verizon (2015)</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Alice/Cablevision (2016)</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Charter/Time Warner Cable (2016)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Sprint/Shenandoah/nTELOS (2016)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Suddenlink/Alice (2016)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Unite/Cox (2016)</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Verizon/XO (2016)</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Consolidated/FairPoint (2017)</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Of the 19 mergers reviewed by PUCs, 10 involved the imposition of conditions by at least one PUC. As noted above, the state-specific conditions imposed by PUCs in these cases are prima facie not necessary for the mergers to be in the national public interest, since any conditions necessary for a merger to meet a national public interest test presumably were applied by the FCC. Moreover, six of the 10 transactions where PUCs imposed conditions were approved by both the FCC and the DOJ without any conditions.

B. Procedural Costs, Incremental Delays and Extraneous Conditions

We now turn to evaluating the nature of PUC interventions and their effects on both companies and consumers.

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45 This estimate is likely conservative. In some of the transactions requiring PUC approval but not subject to explicit conditions, PUCs appear to have influenced the final merger agreements between the merging parties despite the lack of explicit conditions. For instance, in its Sprint-Shentel proceeding, the West Virginia Public Service Commission did not explicitly impose conditions, but noted in its discussion of the merger agreement that the parties to the transaction promised significant investment in the former nTelos coverage area including “approximately sixty cell sites in West Virginia.” See, West Virginia Public Service Commission, Joint Petition for the Consent and Approval in Advance for Shenandoah’s Acquisition of nTELOS and Request for Approval of Debt Financing Pursuant to W.Va. Code §24-212, Commission Order, Case No. 15-1405-C-PC (October 27, 2015) at 1.
To begin, Table 3 shows the durations of merger reviews conducted by PUCs for each of the 19 transactions. We present information on duration because we believe it is a reasonable if imperfect proxy for burden: Other things equal, a longer review process is likely to impose larger compliance costs than a shorter one.

<table>
<thead>
<tr>
<th>Merger</th>
<th>Number of PUCs</th>
<th>Average Review Days</th>
<th>Maximum Review Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bresnan/Cablevision (2010)</td>
<td>2</td>
<td>50</td>
<td>63</td>
</tr>
<tr>
<td>Frontier/Verizon (2010)</td>
<td>9</td>
<td>251</td>
<td>349</td>
</tr>
<tr>
<td>Hawaiian Telcom/Hawaiian Services (2010)</td>
<td>1</td>
<td>261</td>
<td>261</td>
</tr>
<tr>
<td>Q-Comm/Windstream (2010)</td>
<td>7</td>
<td>62</td>
<td>118</td>
</tr>
<tr>
<td>Global Crossing/Level 3 (2011)</td>
<td>2</td>
<td>29</td>
<td>42</td>
</tr>
<tr>
<td>Qwest/CenturyLink (2011)</td>
<td>22</td>
<td>158</td>
<td>321</td>
</tr>
<tr>
<td>Cablevision/Charter (2013)</td>
<td>1</td>
<td>65</td>
<td>65</td>
</tr>
<tr>
<td>Sprint/SoftBank/Starburst (2013)</td>
<td>6</td>
<td>56</td>
<td>177</td>
</tr>
<tr>
<td>AT&amp;T/Cricket/Leap (2014)</td>
<td>5</td>
<td>6</td>
<td>31</td>
</tr>
<tr>
<td>Frontier/AT&amp;T (2014)</td>
<td>1</td>
<td>257</td>
<td>257</td>
</tr>
<tr>
<td>Level 3/tw telecom (2014)</td>
<td>8</td>
<td>65</td>
<td>92</td>
</tr>
<tr>
<td>Frontier/Verizon (2015)</td>
<td>2</td>
<td>211</td>
<td>260</td>
</tr>
<tr>
<td>Altice/Cablevision (2016)</td>
<td>2</td>
<td>214</td>
<td>224</td>
</tr>
<tr>
<td>Charter/Time Warner Cable (2016)</td>
<td>5</td>
<td>219</td>
<td>315</td>
</tr>
<tr>
<td>Sprint/Shenandoah/nTELOS (2016)</td>
<td>1</td>
<td>63</td>
<td>63</td>
</tr>
<tr>
<td>Suddenlink/Altice (2016)</td>
<td>6</td>
<td>80</td>
<td>192</td>
</tr>
<tr>
<td>Unite/Cox (2016)</td>
<td>1</td>
<td>53</td>
<td>53</td>
</tr>
<tr>
<td>Verizon/XO (2016)</td>
<td>17</td>
<td>85</td>
<td>314</td>
</tr>
<tr>
<td>Consolidated/FairPoint (2017)</td>
<td>11</td>
<td>121</td>
<td>179</td>
</tr>
</tbody>
</table>

As Table 3 demonstrates, state review of communications mergers often involves multiple PUC proceedings, each lasting for many months. For example, the 2010 transaction between Frontier and Verizon was reviewed by nine PUCs, with the proceedings lasting between 153 and 349 days. Altogether, the transaction involved over 1,552 filings, including 616 filings before the Washington PUC, 237 filings before the Illinois PUC, 226 filings before the Oregon PUC and 188 filings before the Ohio PUC.

The procedural costs associated such reviews are significant. In 2015, despite receiving an advisory opinion from the California Attorney General which found that the transaction would not aversely affect competition, the California PUC (CPUC) engaged in a 261-day review of
Verizon’s divestiture of its California wireline assets to Frontier which involved at least 204 individual filings.\textsuperscript{46} Eight different groups of “Protestors” – including customers and competitors as well as “public interest” groups funded by the state\textsuperscript{47} – filed formal interventions demanding a total of 54 specific conditions. The CPUC’s summary of their demands filled over 20 pages of single-spaced text in its final Order approving the merger, which also included the summary table reproduced below.\textsuperscript{48}

\begin{table}[h]
\centering
\caption{Summary of “Protestor” Demands in the CPUC Review of the 2015 Frontier-Verizon Transaction}
\begin{tabular}{|l|c|l|}
\hline
Type of Condition               & Number & Parties Proposing Conditions          \\
\hline
Financial Commitments           & 5      & ORA, CETF, Greenlining                \\
Pricing Commitments             & 7      & TURN, CETF                           \\
Investment Requirements         & 4      & ORA, TURN, CETF                       \\
New Operational Requirements    & 19     & ORA, TURN, CforAT                     \\
New Reporting Requirement       & 19     & ORA, TURN, CforAT                     \\
\hline
Total Proposed Conditions       & 54     &                                      \\
\hline
\end{tabular}
\end{table}

Notes: The original version of the table from the CPUC Order incorrectly reports a total of 53 conditions. This has been corrected in the table above. See CPUC Order at 16.

The CPUC provided over $500,000 in compensation to intervenors,\textsuperscript{49} and Verizon and Frontier ultimately entered into settlements with 11 different parties.

\textsuperscript{46} California Public Utilities Commission, \textit{In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429C), Verizon California, Inc. (U1002C), Verizon Long Distance LLC (U5732C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications}, Order, Decision No. 15-12-005 (December 3, 2015) at 4-5 (hereafter \textit{CPUC Order}). One of the authors filed an expert report in that matter. See \textit{In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429C), Verizon California, Inc. (U1002C), Verizon Long Distance LLC (U5732C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications}, Declaration of Jeffrey A Eisenach on Behalf of Verizon Communications, California Public Utilities Commission, Proceeding No. A1503005 (August 24, 2015).

\textsuperscript{47} California is one of a several states offering an “Intervenor Compensation Program,” which “allows qualified parties in proceedings before the Commission to request compensation for their participation.” See California Public Utilities Commission, “The Intervenor Compensation Program” (available at \url{http://www.cpuc.ca.gov/icomp/}). The propensity for ideologically-driven public interest groups to ally with private firms to engage in rentseeking is often referred to as the “Baptists and bootleggers” phenomenon. See \textit{Eisenach and Singer 2013}.

\textsuperscript{48} See \textit{CPUC Order} at 16.

\textsuperscript{49} See California Public Utilities Commission, \textit{In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429 C) Verizon California Inc. (U 1002 C), Verizon Long Distance, LLC (U 5732 C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California Inc. and Related Approval of Transfer of Assets and Certifications}, Order, Decision No. 16-04-031 (April 21, 2016) at 1. See also California Public Utilities Commission, \textit{In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429 C) Verizon California Inc. (U 1002 C), Verizon Long Distance, LLC (U 5732 C), and Newco West Holdings LLC for
Similarly, in the Oregon PUC’s Qwest-CenturyLink proceeding, which lasted for 304 days, there were at least 34 separate testimony filings. Petitions to Intervene were filed by at least 14 parties, and while Qwest argued that many of these entities lacked standing to intervene, the ALJ overseeing the proceeding ultimately admitted petitions from all potential intervenors. Thus, Covad, tw telecom, Level 3, Charter, and Integra filed direct testimony as a group, and Level 3, Charter, Integra, and a number of additional parties also individually filed direct testimony. In many cases, more than one witness testified on behalf of a given party; witnesses included both outside experts and company employees. According to the final order, the proceeding was characterized by “virtually continuous litigation on matters of discovery requests and relevance of testimony among the Applicants and various intervenors.”

In addition to the burden created by multiple duplicative and protracted proceedings, the PUC review process frequently results in delays beyond those imposed by federal reviews. For each PUC-reviewed merger, Table 5 indicates the length of the FCC review, the length of the longest PUC review, and the incremental number of days between the conclusion of the federal review process and the conclusion of the final PUC review.

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Approval of Transfer of Control Over Verizon California Inc. and Related Approval of Transfer of Assets and Certifications, Order, Decision No. 16-04-030 (April 21, 2016) at 1.


52 Oregon Order at 2.
As the table shows, PUC reviews persisted beyond the date of FCC approval in 10 of the 19 transactions in which PUCs intervened; in six of ten transactions PUCs delayed closure of the transaction by more than a month.\textsuperscript{53} For the AT&T-Frontier transaction, final PUC approval created an additional delay of 82 days after the completion of the FCC’s 220-day review. California’s review of the 2015 Verizon-Frontier transaction, described above, delayed consummation of the merger by an additional 92 days beyond the 209 days required to gain FCC approval. The New York and Pennsylvania PUC reviews of the Verizon-XO transaction, which were essentially coterminous, delayed the transaction by an additional 72 days. As noted above, such delays impose significant costs on the merging parties, and deny consumers the public interest benefits of the merger for the duration of the reviews.\textsuperscript{54}

\textsuperscript{53} To the extent the FCC delays issuing a final order pending completion of PUC reviews, these figures are conservative.

\textsuperscript{54} Delays in achieving regulatory clearance can put an entire transaction at risk because mergers often rely on financing agreements whose terms depend on the duration of the closing process. See Linda L. Curtis and Melissa L.
In addition to these procedural and temporal costs, the conditions imposed by PUCs on merging firms create substantial burdens that subvert the realization of merger efficiencies and reduce overall consumer welfare. Table 6 presents a breakdown on the types of conditions mandated by PUCs for each of the mergers where PUCs granted conditional approval.

<table>
<thead>
<tr>
<th>Merger</th>
<th>Price Control Conditions</th>
<th>Employment Conditions</th>
<th>Investment Conditions</th>
<th>Other Conditions</th>
<th>Most Favored State</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frontier/Verizon (2010)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Hawaiian Telcom/Hawaiian Services (2010)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Qwest/CenturyLink (2011)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>AT&amp;T/Cricket/Leap (2014)</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Frontier/AT&amp;T (2014)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Frontier/Verizon (2015)</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Altice/Cablevision (2016)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Charter/Time Warner Cable (2016)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>VerizonXO (2016)</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Consolidated/FairPoint (2017)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

Of the ten mergers subject to PUC conditions, nine involved imposition of price controls. For instance, consent by the New Jersey Board of Public Utilities to the Altice-Cablevision merger required that the company agree to offer 10 Mbps broadband service for $24.95 per month or less for three years.\(^\text{55}\) This condition was imposed despite the fact that the transaction was approved by the FCC with no conditions, and despite the fact that broadband service is exclusively an interstate service. Indeed, in its order approving the merger, the FCC explicitly ruled out any threat to competition.\(^\text{56}\)

For the Frontier-AT&T transaction, the Connecticut Attorney General sought and won approval from the Public Utilities Regulatory Authority for a settlement that froze price increases for basic

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\(^{56}\) Federal Communications Commission, *In the Matter of Applications Filed by Altice N.V. and Cablevision Systems Corporation to Transfer Control of Authorizations from Cablevision Systems Corporation to Altice N.V., Memorandum Opinion and Order, WC Docket No. 15-257 (May 3, 2016)* at ¶15 (“[b]ased on the record evidence, we find the transaction is unlikely to have adverse competitive effects.”).
landline service, the basic broadband bundle, and standalone basic broadband for three years.\textsuperscript{57} Again, the FCC approved this merger unconditionally, finding that “the transaction is not likely to harm competition or consumers and likely will result in public interest benefits.” \textsuperscript{58} As discussed above, even as remedies to restore competition, price controls are a crude and unwieldy instrument that are more likely to harm than benefit consumers in the long-run.\textsuperscript{59} However, in these instances, price controls were imposed absent any evidence of a threat to competition, suggesting that political considerations rather than economic welfare considerations were behind these interventions.

PUCs also frequently impose conditions relating to levels of post-merger employment or investment by the merging parties. Table 7 demonstrates that for each merger subject to employment and investment conditions and involving multiple states, there appear to be states acting opportunistically at the expense of other states, which chose not to impose such conditions.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|c|}
\hline
Merger & PUCs Reviewing Transaction & Imposing Employment Conditions & Imposing Investment Conditions \\
\hline
Frontier/Verizon (2010) & 9 & 4 & 8 \\
Qwest/CenturyLink (2011) & 22 & 3 & 7 \\
Frontier/Verizon (2015) & 2 & 0 & 1 \\
Altice/Cablevision (2016) & 2 & 2 & 2 \\
Charter/Time Warner Cable (2016) & 5 & 1 & 3 \\
Verizon/XO (2016) & 17 & 2 & 0 \\
Consolidated/FairPoint (2017) & 7 & 2 & 3 \\
\hline
\end{tabular}
\caption{PUC Investment and Employment Conditions in Transactions Involving Multiple PUC Reviews}
\end{table}

For six of the seven transactions where PUCs imposed employment or investment conditions, at least one of the other states that reviewed the transaction chose not to impose such conditions. Further, most PUCs did not review these transactions at all, usually because the state legislatures or the PUCs themselves had determined that it was sound public policy to not review transactions involving these types of entities. For example, the Verizon-XO transaction could in


\textsuperscript{58} Federal Communications Commission, \textit{In the Matter of Applications Filed by Frontier Communications Corporation and AT&T Inc. for the Assignment or Transfer of Control of Southern New England Telephone Company and SNET America, Inc., Memorandum Opinion and Order, WC Docket No. 14-22(July 25, 2014) at ¶ 4.}

\textsuperscript{59} See e.g., Kevin W. Caves and Jeffrey A. Eisenach, “What Happens When Local Phone Service is Deregulated?” \textit{Regulation} (Fall 2012) 34-41.
theory have been subject to PUC jurisdiction in every state except Alaska, only 17 PUCs actually reviewed the transaction. Thus, in 32 out of the 49 states where Verizon and XO overlapped, the states relied exclusively on federal reviews to ensure their consumers were protected.

As shown in Table 7, employment conditions were imposed in six of the seven transactions. The specific employment conditions mandated by PUCs are often targeted at small groups of employees, suggesting political motivations. For instance, in its Qwest-CenturyLink proceeding, the Minnesota Public Utilities Commission mandated that for up to 30 months, the merged company would not allow the union workforce to drop by more than 1.0 percent of the pre-merger total and would not allow the workforce of employees represented by the Communications Workers of America and the International Brotherhood of Electrical Workers to drop by more than 0.5 percent of the pre-merger total; the Minnesota PUC also stipulated that the combined firm not close call centers operated by union employees for over a year. For the Verizon-XO transaction, the New York Public Service Commission prohibited layoffs only for customer facing jobs at XO Communications. This condition was also imposed by the New York Public Service Commission in the Consolidated-Fairpoint, Charter-Time Warner, and Altice-Cablevision proceedings.

PUCs mandated investment conditions in seven of the 19 mergers they approved. PUCs sometimes require investments of a specific dollar amount, but more often specify a service or coverage goal that must be met following the merger. The instances in which specific dollar amounts were mandated are summarized in Table 8.

60 Federal Communications Commission, In the Matter of Section 63.71 Application of XO Communications, LLC, Section 63.71 Application, Order, WC Docket No. 14-225 (October 31, 2014) at 2.

61 Minnesota Public Utilities Commission, In the Matter of the Joint Petition for Approval of Indirect Transfer of Control of Qwest Operating Companies to CenturyLink, OrderAccepting Settlement Agreements and Approving Transfer of Control Subject to Conditions, Docket No. PA-10-456(January 24, 2017) at 8-9.

62 State of New York Public Service Commission, Petition of XO Holdings, XO Communications Services, LLC, and Verizon Communications Inc. for Approval of a Proposed Transaction Pursuant to Section 100 of the Public Service Law, Order Granting Joint Petition Subject to Conditions, Case 16-C-0288 (January 24, 2017) at 22.

63 New York Public Service Commission, Joint Petition of FairPoint Communications, Inc., Berkshire Telephone Corporation d/b/a FairPoint Communications, Cautauqua and Erie Telephone Corporation d/b/a FairPoint Communications, Taconic Telephone Corporation d/b/a Fairpoint Communications, FairPoint Business Services LLC, Consolidated Communications, Inc., and Consolidated Communications Holdings, Inc. for Approval of Proposed Transactions Pursuant to Sections 99, 100 and 101 of the New York State Public Service Law, Order, Case No. 17-C-0050 (June 15, 2017) at 3.

64 New York Public Service Commission, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order, Case No. 15-M-0388 (January 8, 2016) at 4.

65 New York Public Service Commission, Joint Petition of Altice N.V. and Cablevision Systems Corporation and Subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements, Order, Case No. 15-M-0647 (June 15, 2016) at 4.
Overall, PUCs imposed explicit monetary commitments for these seven transactions of over $1.03 billion dollars. In all of these cases the explicit monetary requirements were accompanied by stipulations adding substantial costs where the total commitments were not specified. For instance, the specified monetary commitment was $5 million for the Consolidated-FairPoint transaction, but the Vermont PUC also stipulated that Consolidated commit to capital investment in Vermont of 14 percent of total Vermont revenue for three years after the merger.\textsuperscript{66} For the Altice-Cablevision transaction, while the explicitly specified monetary commitment was $3 million, the New York Public Service Commission mandated increased network speed enhancements that it estimated would cost $20 million.\textsuperscript{67} Many of these investment requirements were for broadband service, which is exempt from PUC jurisdiction. Furthermore, four of these seven transactions were subject to MFS provisions. While it is difficult to explicitly quantify the expenditures triggered by the MFS clauses, the broad scope of these provisions suggests the strong possibility of even greater hidden extractions.

In certain cases, the conditions imposed by PUCs are difficult to explain except as efforts to serve parochial interests. For example:

\begin{table}
\centering
\caption{Monetary Commitments Imposed by PUCs for Mergers Involving Investment Requirements}
\begin{tabular}{|l|c|c|c|}
\hline
Merger & Explicit Monetary Commitment (Millions) & Additional Monetary Commitments & MFS Condition \\
\hline
Frontier/Verizon (2010) & $356 & Yes & Yes \\
Qwest/CenturyLink (2011) & $330 & Yes & No \\
Frontier/AT&T (2014) & $64 & Yes & No \\
Frontier/Verizon (2015) & $192 & Yes & No \\
Altice/Cablevision (2016) & $3 & Yes & Yes \\
Charter/Time Warner Cable (2016) & $83 & Yes & Yes \\
Consolidated/FairPoint (2017) & $5 & Yes & Yes \\
\hline
\end{tabular}
\end{table}

\textsuperscript{66} State of Vermont Public Service Board, \textit{Joint Petition of Consolidated Communications Holding Inc. et al., for approval of a transfer of control by merger, pursuant to 30 V.S.A. §§ 107, 108, 109, 231(a), and 311, Order, Case No. 8881 (June 26, 2017)} at 34.

\textsuperscript{67} New York Public Service Commission, \textit{Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions, Case No. 15-M-0647 (June 15, 2016)} at 67. Altice also agreed to a similar commitment to increase network speeds in New Jersey, although the monetary value of the mandate was not explicitly stated. See New Jersey Board of Public Utilities, \textit{In the Matter of the Verified Joint Petition of Altice N.V. and Cablevision Systems Corporation and Cablevision Cable Entities for Approval to Transfer Control of Cablevision Cable Entities, Order Approving Stipulation of Settlement, Docket No. CM15111255 (May 26, 2016)} at 8.
• As a condition of the Consolidated Communications-FairPoint transaction, the New York Public Service Commission mandated that the merged company bid in the second phase of Governor Cuomo’s NY Broadband Program.68

• In the Frontier-AT&T transaction, the Connecticut PUC (acting in conjunction with the state attorney general) extracted commitments to philanthropic giving, including $875,000 for content creation on public, educational, and government access channels, $512,500 for athletics at the University of Connecticut, $75,000 for the Connecticut Open — a tennis tournament sponsored by a private company — and $500,000 for other charities.69

• As a condition of granting approval for the 2010 Verizon-Frontier transaction, the West Virginia commission required that Frontier maintain its regional headquarters in Charleston, West Virginia, housing all executive operations for West Virginia, Tennessee, North Carolina, South Carolina, Mississippi, Alabama, Georgia, and Florida.70

• Before it would approve the 2015 Frontier-Verizon transaction, the California Public Utilities Commission mandated that all of Frontier’s future philanthropic contributions be reported to the Commission on an annual basis.71

These conditions seem to be clearly in the nature of rent-seeking by PUCs on behalf of favored political constituencies, and are not consistent with the national public interest.

Perhaps the most pernicious types of conditions imposed by PUCs are MFS clauses. A representative example of this type of clause was contained in the New York Public Service Commission’s Verizon-XO order:

[T]he Commission is aware that the Petitioners continue to pursue approval in other state jurisdictions, and that these jurisdictions may require commitments that would also be beneficial to New York. In order to ensure that New York gains the benefits of these commitments, we will require Petitioners to agree to a most favored state clause. If, in obtaining approval of the transaction in other jurisdictions, the Petitioners commit to any condition, they will within 30 days following such commitment, notify the Commission of its intent to provide those

68 “Public Service Condition Conditionally Approves Financial Transactions for the Sale of Three Local Telephone Corporations in New York,” New York State Public Service Commission (June 15, 2017) (“While a lawsuit could have blocked Partners’ expansion to South Shore Hospital, it also would have maintained the unacceptable status quo in the health care market. Today’s resolution goes well beyond that…”).

69 State of Connecticut Public Utilities Regulatory Authority, Joint Application of Frontier Communications Corporation and AT&T Inc. for Approval of a Change of Control, Settlement Agreement, Docket-No. 14-01-46(August 11, 2014) at 8.

70 West Virginia Public Service Commission, In re Frontier Communications Corp., Order, Case No. 09-0871-T-PC/Case No. 09-1600-T-CN (May 13, 2010) at Appendix A, ¶ 5.

71 California Public Utilities Commission, In the Matter of the Joint Application of Frontier at al. for Approval of Transfer of Control over Verizon California, Inc. and Related Approval of Transfer of Assets, Decision, Case No. 15-030995 (December 9, 2015) at § 3.2.5.
same benefits in New York at terms that are reasonably comparable to the other state or federal commitments.72

From an economic perspective, MFS conditions exacerbate the hold-up problem while significantly increasing the risk to the merging parties. MFS conditions aggravate the hold-up problem by effectively ensuring that all states (that is, all states which impose MFS conditions) obtain whatever conditions are extracted by the state with the largest bargaining advantage over the merging parties. Furthermore, MFS provisions are never a useful regulatory instrument for maximizing consumer welfare. Indeed, if appropriately defined relevant markets are local, then competition is unique to each relevant market and remedies must be assessed on a market by market basis. In contrast, while MFS clauses do nothing to promote consumer welfare, they clearly have the potential to increase merger costs dramatically, and the very existence of such provisions could even deter merger activity. MFS provisions were imposed by the New York Public Service Commission in the Verizon-XO, Consolidated-FairPoint, Charter-Time Warner, and Altice-Cablevision proceedings, the New Jersey Board of Public Utilities in the Altice-Cablevision proceeding, and the Oregon Public Utility Commission in the 2010 Frontier-Verizon transaction.

IV. Summary and Conclusions

Our findings provide empirical support for concerns raised by academics and policymakers about the effects of state intervention in merger reviews, especially when interventions are undertaken by PUCs under a public interest standard in which the merging parties bear the burden of proof. Such interventions frequently delay transactions which have been found by federal authorities to generate public interest benefits, thereby postponing the gains to consumers from these transactions. Furthermore, PUC intervention imposes substantial direct costs on the merging parties (which ultimately are passed on to consumers) and even larger indirect costs in the form of merger conditions which – while possibly benefiting the states which engage in beggar-thy-neighbor interventions – harm the overall public interest on a national basis. Finally, the use of merger reviews by PUCs to impose conditions on firms offering IP-based services (including conditions specifically relating to broadband) is increasingly at odds with federal policy, which preempts such services from state oversight in favor of a uniform national approach.

72 State of New York Public Service Commission, Petition of XO Holdings, XO Communications Services, LLC, and Verizon Communications Inc. for Approval of a Proposed Transaction Pursuant to Section 100 of the Public Service Law, Order Granting Joint Petition Subject to Conditions, Case 16-C-0288 (January 24, 2017) at 20-21.
Appendix A: PUC Reviewed and Approved Merger Details

This appendix provides underlying data on the 19 communications mergers reviewed by PUCs. In cases where PUCs imposed conditions, we provide an example of each type of condition. However, it is important to note that the list of conditions provided here is by no means exhaustive, as a complete list (even in summary form) would render the appendix unmanageably long.
Altice/Cablevision (2016)
- FCC Approval Date: May 3, 2016
- Final PUC Approval Date: June 15, 2016
- Merger Consummation Date: June 21, 2016
- Parties to the Merger: Cablevision Systems Corporation, Altice N.V., Cablevision Lightpath, Inc., and all Cablevision cable entities operating in New York
- Merger Value: $17.7 billion including debt
- PUCs Involved: New Jersey, New York
- Conditions:
  - Price Control
    - New Jersey: Must offer low-income broadband service with speeds up to 30 Mbps at a price not to exceed $14.99 per month. This low income broadband service cannot include a modem fee and must be offered without a data cap.
  - Investment
    - New York: Must offer increased broadband speeds to all of its New York customers for up to 300 Mbps and must be completed by the end of 2017.
  - Employment
    - New York: Cannot lay off or take any action effecting an involuntary reduction in any customer-facing jobs in the four years following the issuance of the final order.
  - Additional Conditions
    - New York: Final order justifies interference by the Commission by stating that the conditions are “consistent with and support Governor Andrew Cuomo’s commitment to broadband investment and infrastructure expansion throughout the State of New York.”
  - Most Favored State
    - New York and New Jersey

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74 New York Public Service Commission, Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions, Case No. 15-M-0647(June 15, 2016) at 2.


76 New York Public Service Commission, Joint Petition of Altice N.V. and Cablevision Systems Corporation and subsidiaries for Approval of a Holding Company Level Transfer of Control of Cablevision Lightpath, Inc. and Cablevision Cable Entities, and for Certain Financing Arrangements, Order Granting Joint Petition Subject to Conditions, Case No. 15-M-0647 (June 15, 2016) at 3.
AT&T/Cricket/Leap (2014)
- FCC Approval Date: March 13, 2014
- Final PUC Approval Date: November 8, 2013
- Merger Consummation Date: March 13, 2014\(^77\)
- Parties to the Merger: Cricket License Company, Leap Wireless International, AT&T
- Merger Value: $1.2 billion\(^78\)
- PUCs Involved: California
- Conditions
  - Price Control
    - California: AT&T must offer a $40 per month prepaid plan for the next 18 months.\(^79\)
  - Investment
    - N/A
  - Employment
    - N/A
  - Other Conditions
    - N/A
  - Most Favored State
    - N/A

Bresnan/Cablevision (2010)
- FCC Approval Date: September 21, 2010
- Final PUC Approval Date: September 8, 2010
- Merger Consummation Date: December 14, 2010\(^80\)
- Parties to the Merger: Bresnan Broadband Holdings, Cablevision Systems Corporation
- Merger Value: $1.365 billion\(^81\)
- PUCs Involved: Colorado, Utah
- Conditions: N/A

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Global Crossing/Level 3 (2011)
- FCC Approval Date: September 29, 2011
- Final PUC Approval Date: June 2, 2011
- Merger Consummation Date: October 4, 2011
- Parties to the Merger: Level 3 Communications, Global Crossing North America
- Merger Value: $1.9 billion
- PUCs Involved: Minnesota, Texas
- Conditions: N/A

Sprint/SoftBank/Starburst (2013)
- FCC Approval Date: July 3, 2013
- Final PUC Approval Date: May 23, 2013
- Merger Consummation Date: July 10, 2013
- Parties to the Merger: Sprint Communications, Starburst II, Softbank Corp.
- Merger Value: $21.6 billion
- PUCs Involved: California, Mississippi, New York, Utah, DC, West Virginia
- Conditions: N/A

Suddenlink/Altice (2016)
- FCC Approval Date: May 4, 2016
- Final PUC Approval Date: December 18, 2015
- Merger Consummation Date: December 22, 2015
- Parties to the Merger: Altice N.V., Cequel Corporation, Cebridge Telecom
- Merger Value: $9.1 billion
- PUCs Involved: California, Mississippi, Louisiana, Texas, Virginia, West Virginia
- Conditions: N/A

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Unite/Cox (2016)
- FCC Approval Date: October 20, 2016
- Final PUC Approval Date: September 9, 2016
- Merger Consummation Date: October 31, 2016\(^88\)
- Parties to the Merger: Unite Private Networks, Cox Communications
- Merger Value: Information Not Publically Available\(^89\)
- PUCs Involved: Texas
- Conditions: N/A

Cablevision/Charter (2013)
- FCC Approval Date: May 14, 2013
- Final PUC Approval Date: May 3, 2013
- Merger Consummation Date: July 1, 2013\(^90\)
- Parties to the Merger: Charter Communications, Inc., Cablevision Systems Corporation, Bresnan Broadband of Utah, LLC\(^91\)
- Merger Value: $1.625 billion\(^92\)
- PUCs Involved: Utah
- Conditions: N/A

\(^88\) Public Utility Commission of Texas, Joint Application of Unite Private Networks, LLC, and Cox Communications, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Courtesy Notice of Consummation of Indirect Change of Control of UPN, Docket No. 46228 (November 18, 2016) at 1.


\(^91\) Utah Public Service Commission, In the Matter of the Application of Bresnan Broadband of Utah, LLC for Informal Adjudication of Indirect Transfer of Control, Order Approving Indirect Transfer of Control, Docket No. 13-2476-01 (May 3, 2013) at 1.

Charter/Time Warner Cable (2016)

- FCC Approval Date: May 10, 2016
- Final PUC Approval Date: May 12, 2016
- Merger Consummation Date: May 18, 2016
- Parties to the Merger: Charter Communications, Inc., Charter Fiberlink, Time Warner Cable, Inc., Time Warner Cable Information Services (California), LLC, Advance/Newhouse Partnership, Bright House Networks, LLC, Bright House Networks Information Services (California), LLC
- Merger Value: $60 billion
- PUCs Involved: California, Hawaii, New Jersey, New York, West Virginia
- Conditions:
  - Price Control
    - New Jersey: New Charter must offer the Time Warner Everyday Low Price $14.99 service at the same speeds being offered at the time of the final order for two years.
  - Investment
    - New Jersey: Must invest a minimum of $750,000 in improvements in customer service.
  - Employment
    - New York: No net losses in customer facing jobs for the first four years following the final order.
  - Additional Conditions
    - New York: Final order justifies interference by the Commission by stating that the “conditions set forth in this Order are consistent with, and help to achieve, Governor Andrew Cuomo’s commitment to broadband investment and infrastructure expansion.”
  - Most Favored State
    - New York


94 New York Public Service Commission, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order, Case No. 15-M-0388 (January 8, 2016) at 3.


96 New York Public Service Commission, Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements, Order, Case No. 15-M-0388 (January 8, 2016) at 3.
Consolidated/FairPoint (2017)

- FCC Approval Date: May 8, 2017
- Final PUC Approval Date: June 28, 2017
- Merger Consummation Date: July 3, 2017\(^97\)
- Parties to the Merger: Consolidated Communications Holdings, Inc., Consolidated Communications, Inc., FairPoint Communications, Inc., Falcon Merger Sub, Inc., and various FairPoint Illinois LECs\(^98\)
- Merger Value: $1.5 billion\(^99\)
- Conditions:
  - Price Control
    - Illinois: Prohibited from increase tariffed retail rates for one year after the date of reorganization.
  - Investment
    - Vermont: Must invest an average of 14% of total Vermont revenues in each of the three years following the merger, in addition to $1 million each year.
  - Employment
    - New York: Must maintain current levels of all customer-facing jobs at the ILECs in New York for two years post merger.
  - Additional Conditions
    - N/A
  - Most Favored State
    - N/A

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\(^{98}\) Illinois Commerce Commission, Joint Application for approval of a Reorganization pursuant to §7-204 of the Public Utilities Act and for waiver of Condition (10) imposed in Docket 10-0125 in connection therewith, Order, Docket No. 17-0043 (June 28, 2017) at 1.

Frontier/AT&T (2014)

- FCC Approval Date: July 25, 2014
- Final PUC Approval Date: October 15, 2014
- Merger Consummation Date: October 24, 2014100
- Parties to the Merger: Frontier Communications Corporation, AT&T Inc., and The Southern New England Telephone Company101
- Merger Value: $2 billion102
- PUCs Involved: Connecticut
- Conditions:
  - Price Control
    - Will not increase the basic primary residential rate for three years after the closing of the merger.
    - Must offer basic broadband bundle and product at or below $19.99
  - Investment
  - Employment
    - N/A
  - Additional Conditions
    - Donate $50,000 per year to the VA and subsidize broadband service for their pilot project.
    - Donate $500,000 in annual charitable contributions in Connecticut starting in 2015.
    - Must sponsor the Connecticut Open Presented by United Technologies in the amount of $75,000.
    - Must sponsor University of Connecticut Athletics Football and Men’s and Women’s Basketball for two years in the total amount of $512,500.
  - Most Favored State
    - N/A

101 Connecticut Public Utilities Regulatory Authority, Joint Application of Frontier Communications Corporation and AT&T Inc. For Approval of a Change of Control, Decision, Docket No. 14-01-46 (October 15, 2014) at 1.
Frontier/Verizon (2010)

- FCC Approval Date: May 21, 2010
- Final PUC Approval Date: May 13, 2010
- Merger Consummation Date: July 1, 2010\(^{103}\)
- Parties to the Merger: Frontier Communications Corporation and Verizon Communications Inc. and subsidiaries\(^{104}\)
- Merger Value: $8.6 billion\(^{105}\)
- PUCs Involved: California, South Carolina, Nevada, Ohio, Arizona, Oregon, Washington, Illinois, West Virginia
- Conditions:
  - Price Control
    - California: Basic primary residential rates will be capped at pre-merger levels for one year following the close of the merger.
  - Investment
    - Washington: Must spend at least $40 million on broadband deployment.
  - Employment
    - West Virginia: Must locate new regional headquarters in West Virginia.
  - Additional Conditions
    - South Carolina: Must provide a free personal computer to its customers as a promo when they sign up with broadband service.
  - Most Favored State
    - Oregon


\(^{104}\) California Public Utilities Commission, Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc., New Communications ILEC Holdings, Inc., New Communications of the Southwest Inc., Verizon West Coast Inc. (U1020C), Verizon California Inc. (U1002C), New Communications Online and LongDistance, Inc., Verizon long Distance, LLC (U5732C) and Verizon Enterprise Solutions, LLC (U5658C) For Approval of the Sale of Assets, Transfer of Certificates and Customer Bases, and Issuance of Additional Certificates, Decision, Decision No. 09-10-056 (October 29, 2009) at 1.

Frontier/Verizon (2015)

- FCC Approval Date: September 2, 2015
- Final PUC Approval Date: December 3, 2015
- Merger Consummation Date: February 5, 2015
- Parties to the Merger: Frontier Communications Corporation, Frontier Communications of America, Inc., Verizon California Inc., Verizon Long Distance, LLC., and Newco West Holdings, LLC.
- Merger Value: $10.5 billion
- PUCs Involved: California, Texas
- Conditions:
  - Price Control
    - California: Must offer qualifying customers broadband for $13.99 a month.
  - Investment
    - California: Will install broadband in rural areas and offer a satellite broadband product that allows 5 Mbps to 15 Mbps download speed.
  - Employment
    - N/A
  - Additional Conditions
    - California: Must fund purchase of 50,000 Wi-Fi-capable tablets
  - Most Favored State
    - N/A

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107 California Public Utilities Commission, In the Matter of the Joint Application of Frontier Communications Corporation, Frontier Communications of America, Inc. (U5429C), Verizon California, Inc. (U1002C), Verizon Long Distance LLC (U5732C), and Newco West Holdings LLC for Approval of Transfer of Control Over Verizon California, Inc. and Related Approval of Transfer of Assets and Certifications, Order, Decision No. 15-12-005 (December 3, 2015) at 1.

**Hawaiian Telecom/Hawaiian Services (2010)**

- FCC Approval Date: September 15, 2010
- Final PUC Approval Date: September 22, 2010
- Consummation Date: October 22, 2010\(^{109}\)
- Parties to Reorganization: Hawaiian Telcom, Inc. and Hawaiian Telcom Services Company, Inc.\(^{109}\)
- Assets: $1.35 billion\(^{111}\)
- PUCs Involved: Hawaii
- Conditions:
  - Price Control
    - Hawaiian Telcom will not submit any application for a general utility rate increase before 2013.
  - Investment
    - N/A
  - Employment
    - N/A
  - Additional Conditions
    - Hawaii lays out certain financial conditions specific to bankruptcy.
  - Most Favored State
    - N/A

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Level 3/tw telecom (2014)
- FCC Approval Date: October 24, 2014
- Final PUC Approval Date: October 7, 2014
- Merger Consummation Date: October 31, 2014
- Parties to the Merger: tw telecom, inc. and Level 3 Communications, Inc.
- Merger Value: $5.64 billion
- PUCs Involved: Colorado, DC, Hawaii, Mississippi, New Jersey, Utah, Virginia, West Virginia
- Conditions: N/A

Q-comm/Windstream (2010)
- FCC Approval Date: November 19, 2010
- Final PUC Approval Date: December 15, 2010
- Merger Consummation Date: December 15, 2010
- Parties to the Merger: Q-Comm Corporation, Kentucky Data Link, Norlight Telecommunications, Windstream Corporation
- Merger Value: $782 million
- PUCs Involved: Mississippi, New York, Tennessee, Virginia, Minnesota, West Virginia
- Conditions: N/A

113 Colorado Public Utilities Commission, In the Matter of the Joint Application of tw telecom inc. and Level 3 Communications, Inc. to Execute a Transfer of Control, Decision, Decision No. C14-1006 (August 20, 2014) at 1.
Qwest/CenturyLink (2011)

- FCC Approval Date: March 18, 2011
- Final PUC Approval Date: March 31, 2011
- Merger Consummation Date: April 1, 2011
- Parties to the Merger: Qwest Communications International, CenturyTel
- Merger Value: $12.2 billion
- PUCs Involved: PA, UT, NJ, HI, IA, MT, CO, WV, NY, MS, LA, VA, AZ, WA, NE, OR, MN, GA, MD, OH, DC, CA
- Conditions:
  - Price Control
    - Arizona: Company cannot recover through rates or other fees the acquisition costs of the merger.
  - Investment
    - Utah: Must invest $25 million in broadband infrastructure to benefit customers over next five years.
  - Employment
    - Minnesota: Workforce cannot drop by more than 1% over the next 30 months after the merger, and employees represented by certain unions cannot drop more than 0.5%.
  - Additional Conditions
    - Iowa: For two years following the merger, the company must contribute $125,000 per year in charitable donations.
  - Most Favored State
    - N/A

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Sprint/Shenandoah/NTelos (2016)
- FCC Approval Date: April 15, 2016
- Final PUC Approval Date: October 27, 2015
- Merger Consummation Date: May 9, 2016\(^{119}\)
- Parties to the Merger: Shenandoah Telecommunications Company, NTelos Holdings Corp., SprintCom
- Merger Value: $640 million\(^{120}\)
- PUCs Involved: West Virginia
- Conditions: N/A

Verizon/XO (2016)
- FCC Approval Date: November 16, 2016
- Final PUC Approval Date: January 25, 2017
- Merger Consummation Date: February 1, 2017\(^{121}\)
- Parties to the Merger: XO Communications Services, Verizon Communications Inc.
- Merger Value: $1.8 billion\(^{122}\)
- PUCs Involved: DC, HI, MS, NJ, WV, NY, CA, CO, GA, LA, MD, MN, OH, PA, TX, UT, VA
- Conditions:
  - Price Control
    - N/A
  - Investment
    - N/A
  - Employment
    - New York: Prohibited from eliminating customer-facing jobs for the next four years (excluding retirement).
  - Additional Conditions
    - N/A
  - Most Favored State
    - New York

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